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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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01/16/2004

Artur Schworer

3135

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06/30/2006

WALTER A. HACKLER, Ph.D.

PATENT LAW OFFICE

SUITE B

2372 S.E. BRISTOL STREET

NEWPORT BEACH, CA 92660-0755

EXAMINER

SAFAVI, MICHAEL

ART UNIT

PAPER NUMBER

3673

DATE MAILED: 06/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/759,926	Applicant(s) SCHWORER, ARTUR	
	Examiner M. Safavi	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12 and 14-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18 is/are allowed.
- 6) ☒ Claim(s) 12, 14-17, and 19-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 11, 2006 has been entered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12, 14-17, and 19-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12, line 12, to what does "abutting spacers" refer? The language of claim 12 does not appear to introduce abutting spacers prior to line 12. Are "abutting spacers" the same as "a plurality of spacers" introduced in line 9? Or, are "abutting spacers" different from "a plurality of spacers"?

Claim 22, the recitation at lines 19-21 appears incomplete. Otherwise, it is not clear as to what is being defined by "having a stepped profile, with an abutment surface having a flat first side, and having four straight, parallel rails on the second side, the rails having a hook-shaped cross-section". To what element(s) does the recitation at

lines 19-21 of claim 22 refer. Perhaps, line 19 of claim 22 should include --the spacers-- before "having a stepped profile"?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 12, 14, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by German reference 3810256. German '256 discloses, Fig. 1, two formwork elements comprising parallel flat vertically oriented formwork shells 1, a central element 10 disposed between the formwork elements proximate at an end of the formwork elements and defining gaps between the central element and the formwork shells; the gaps being disposed on opposite sides of the central element; a plurality of spacers 3, 8, 9 disposed in the gaps and on both the central element and the shells, said spacers being aligned, facing one another and configured for enabling stacking of the spacers on one another; and elastic sealing lips 6/7 disposed on at least one of abutting spacers for preventing passage of liquid concrete, (**claim 12**). At least one

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recess can be seen formed along the central element 10, (**claim 14**). Vertical sections mounted to the formwork elements are at 4, for example with the central element 10 and the spacers 3, 8, 9 extending in the connecting direction to a common final plane with the final plane lying perpendicular to the connecting direction, (**claim 19**). At least one crossbar 2 abuts the common final plane with the crossbar 2 being tensioned with the formwork elements via "stopend ties", (e.g., nuts serving to tension the crossbars 2 and forms 1,1), (**claim 20**). The central element can be seem as at least partially longer or shorter in the connecting direction than the spacers, (**claim 21**).

Claims 12, 14, and 19-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Shoemaker '902. Shoemaker '902 discloses, Figs. 1 and 2, two formwork elements comprising parallel flat vertically oriented formwork shells 20, a central element 32 disposed between the formwork elements proximate at an end of the formwork elements and defining gaps between the central element and the formwork shells; the gaps being disposed on opposite sides of the central element; a plurality of spacers 82, 54, 50, 52 disposed in the gaps and on both the central element and the shells, said spacers being aligned, facing one another and configured for enabling stacking of the spacers on one another; and elastic sealing lips 84, 66, 78 disposed on at least one of abutting spacers for preventing passage of liquid concrete, (**claim 12**). At least one recess can be seen formed along the central element 32, (**claim 14**). Vertical sections mounted to the formwork elements are at 30, for example with the central element 32 and the spacers 82, 54, 50, 52 extending in the connecting direction to a

common final plane with the final plane lying perpendicular to the connecting direction, **(claim 19)**. At least one crossbar 100 abuts the common final plane with the crossbar 100 being tensioned with the formwork elements via "stopend ties" 102, 104, **(claim 20)**. The central element can be seen as at least partially longer or shorter in the connecting direction than the spacers, **(claim 21)**.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shoemaker '902.

To have provided spaced tie rods through the forms, spacers, seals and central element 20, 50, 52, 54, 66, 78, 80, 20 thus assuring an integral assembly, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by 323 in Fig. 7 or 8 of Shoemaker, **(claims 16 and 17)**. Attaching the spacers 50 52 via screws instead of nails 98 would have constituted a further obvious expedient to one having ordinary skill in the art at the time the invention was made with screws being an old and well known substitute for nails, **(claim 15)**.

Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over German reference 3810256 when considering Shoemaker.

To have provided spaced tie rods through the forms, spacers, seals and central element 1, 3, 8, 9/9, 8, 3, 1 of German '256, thus assuring an integral assembly, would have been obvious to one having ordinary skill in the art at the time the invention was made as taught by Fig. 7 or 8 of Shoemaker, (**claims 16 and 17**). Attaching the spacers 3, 3 to the forms 1, 1 and spacers 8, 8 to the central member 9/9 via screws or nails 98 would have constituted a further obvious expedient to one having ordinary skill in the art at the time the invention was made as taught by Shoemaker's fasteners 98 with screws being an old and well known substitute for nails, (**claim 15**).

Claim 22 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claim 18 is allowed.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Safavi whose telephone number is (571) 272-7046. The examiner can normally be reached on Mon.-Thur., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on (571) 272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



MICHAEL SAFAVI
PRIMARY EXAMINER
ART UNIT 354

M. Safavi
June 18, 2006